REMARKS/ARGUMENTS

Claims 138-141, 143, 145-157, and 159 are pending. By this Amendment claim 158 is canceled and claim 159 is added. Reconsideration in view of the above amendments and the following remarks are respectfully requested.

Claim Rejections – 35 U.S.C. § 112

Claim 158 stands rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. Applicants have cancelled claim 158, rendering the rejection moot.

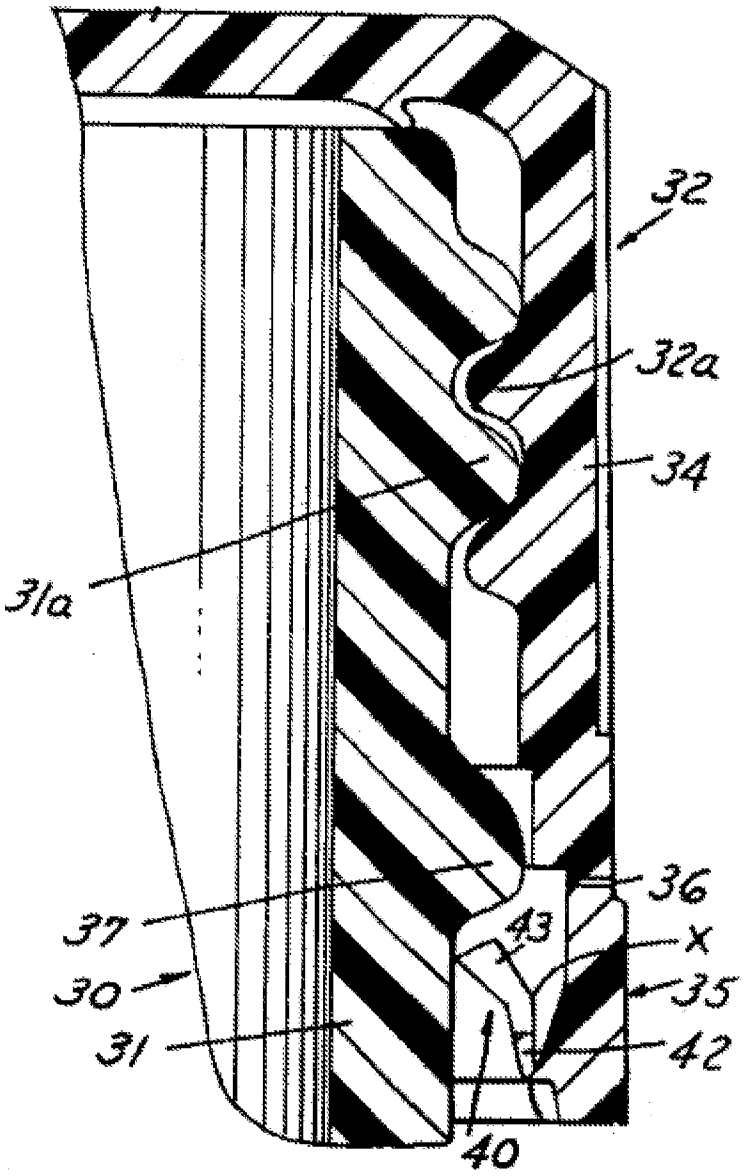
Claim Rejections – 35 U.S.C. § 103

Claims 138-141, 143, 145-150 and 156-158 stand rejected under 35 U.S.C. §103(a) over Ingram et al. (U.S. Patent No. 5,611,446). Further, Claims 151-155 are rejected under 35 USC §103(a) over Ingram in view of Dreyer et al. (U.S. Patent No. 6,006,930). These rejections are respectfully traversed for at least the following reasons.

Independent claim 138 recites, in combination, "said fin members further comprising flexible appendage elements forming a free end of said fin members, said elongated element having a first end connected with said opening-indicator device and a second end, opposite said first end, to which said appendage elements are connected, said flexible appendage elements having a substantially uniform thickness." These features are not taught or suggested in Ingram or Dreyer, or combination thereof.

Ingram is directed to indicating packaging that has been tampered with. With respect to the above recited feature of Applicants' claims, the Office Action maps Ingram's disclosure of element 43 (segment portions) to the "flexible appendage elements" of Applicants' claim 138. The segment portions in Ingram are part of flange 40. The other parts of flange 40 are flange

portion 42, which the Office Action maps to Applicants' "elongated element," the lower part of flange 40, and X which is the hinge point between segment portions 43 and flange portions 42. Ingram's Fig. 3 is partially recreated below (the top and bottom portions of Fig. 3 have been slightly cropped).



First, as can be seen in Fig. 3, segment portions 43 are not substantially uniform in thickness as set forth in claim 138. The portion of 43 near "X" is narrower than the portion at the end of 43. Indeed, as disclosed in Ingram, "This action continues, whereby the bending action passes along the flange toward its tip, and toward successively increasing thickness of segment portions 43." (Column 5, Lines 57-59). Thus, Ingram takes completely the opposite approach to the features called out for in Applicants' claim 138. Accordingly, there is no teaching or suggestion in Ingram of using a uniform thickness for the segment portions.

Independent claim 138 further recites, in combination, "said appendage elements are contained in the thickness of said elongated element." As noted above, the Office Action maps flange portion 42 to the elongated element of Applicants' claims. However, with reference to Fig. 3 in Ingram, the segment portions 43 are not contained by the thickness of the flange portion 42. Indeed, in Ingram, the thickness of the segment portions 43 is greater than the thickness of the flange portion 42. Specifically, "The lower surface 47 of the annular flange 40 is at an angle to the upper surface so that the flange 40 becomes increasingly thicker toward the free end." (Column 4, Lines 45-48) Further, "This action continues, whereby the bending action passes along the flange toward its tip, and toward successively increasing thickness of the segment portions 43." (Column 5, Lines 57-59).

Accordingly, if the width along flange 40 progressively becomes thicker is not possible for a thinner portion to contain the thicker portion. In other words it is not possible for a smaller volume to contain a larger volume. Or to use an analogy, a car straddling two parking spaces is not contained by either parking space. Further, Ingram's Fig. 25A discloses an arrangement that is the opposite of Applicants' claim 138, namely that the flange portion is contained within the thickness of the segment portion. Accordingly, Ingram fails to teach or suggest appendage

elements that are contained in the thickness of elongated elements as required by Applicants' claims.

Furthermore, Applicants' claim 138 recites, in combination "said second end has, contiguously to said appendage elements in a direction of said uniform thickness, a zone of interaction adapted to abut against said projection element." This combination of features is not taught or suggested in Ingram.

In contrast to the features of Applicants' claim 138, the point of interaction between Ingram's bead 37 and some portion of the flange 40 is either the segment portion 43 (see column 4 lines 21-29) when the closure (e.g., cap) is removed or the side of the flange portion 42 when the cap is initially placed onto the container (see column 3, lines 56-59). These two options do not teach or suggest the above recited features of Applicants' claim 138. Engagement of segment portion 43 to bead 37 as shown Ingram's Figure 22 does not show any engagement between the bead 37 and the flange portion 42. Furthermore, the interaction point shown in Fig. 5 is along the side of the flange portion 42, not at the end of the flange portion 42.

In contrast, Applicants' claims set forth that the second end of the elongated element is "opposite said first end, to which said appendage elements are connected." As noted above, the Office Action maps out flange portion 42 to Applicants' elongated element feature in claim 138. Further, the opposite end of the point of contact Ingram's Fig. 5 does not appear to be connected to "said opening-indicator device" (e.g., the first end) as set forth in claim 138. Indeed, Ingram's connection point (e.g., hinge 41) is not opposite the point where bead 37 and flange portion 42 abut.

Additionally, as Ingram's segment portions 43 are greater in thickness than the flange portion 42, it does not appear physically possible for the end of Ingram's flange portion 42 (e.g.,

the second end) to abut against anything (much less bead 37) other than segment portions 43. Accordingly, Ingram fails to teach or suggest the above recited features of Applicants' claim 138.

In addition to the reasons explained above, Ingram also fails to teach or suggest other features of Applicants' claims. Claim 138 recites, in combination, "an extended configuration in which said appendage elements extend substantially transversely from said elongated element and in which said appendage elements have a curved profile adapted to partially surround said projection elements when said zone of interaction abuts against said projection elements in such a way as to prevent overturning of said fin members around said deformable zone during the first opening of the container." The above features are not taught or suggested in Ingram.

Applicants' note that the Office Action appears to ignore that the above features are required "during the first opening of the container." The Office Action's discussion of the above features references Fig. 5 and Fig. 13 of Ingram. However, these figures are directed to when the cap is held in place or being closed, (See description of the drawings for Fig. 5 and Fig. 13 in Ingram), not the first opening of the container as recited in claim 138.

In contrast to the above figures, the below recreated Fig. 22 and 24 from Ingram each show cross sectional views of when a cap is removed.

FIG.22

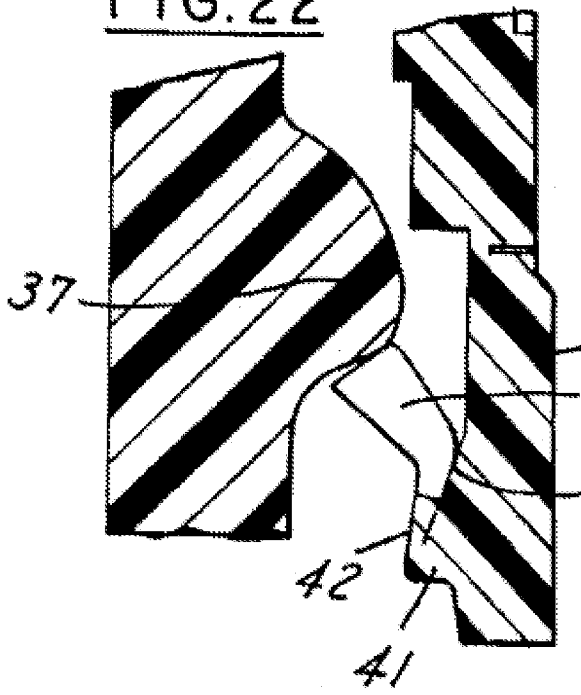
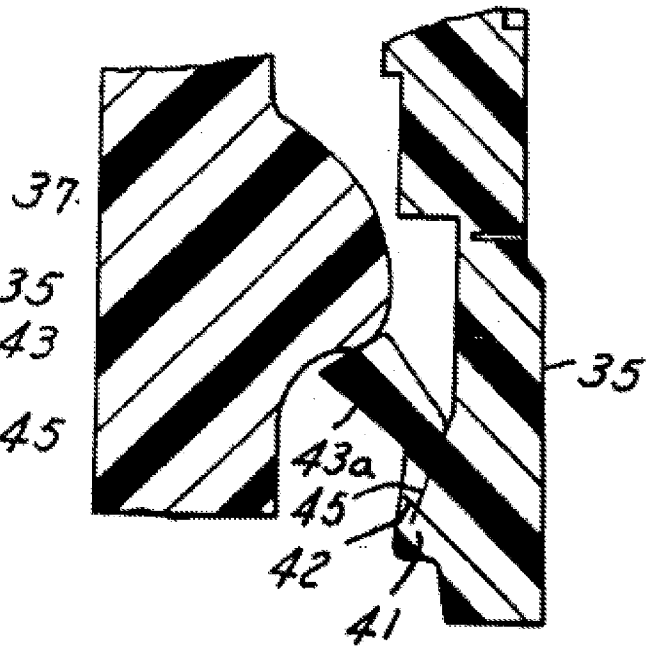


FIG.24



As can be seen, segment portion 43 (to which the Office Action maps to claim 138's Flexible Appendage Elements), engages with bead 37 (to which the Office Action maps claim 138's Projection Elements). However, engagement of the two is at the end of segment portion 43. Furthermore, the profile where segment portions 43 and bead 37 engage is straight.

In contrast, Applicants' claims require that during the first opening of the container that the "appendage elements have a curved profile adapted to partially surround said projection elements." Accordingly, Ingram's straight profile segment portion does not teach or suggest the usage of Applicants' "curved profile adapted to partially surround said projection elements." The profile in Ingram is not curved and it is not adapted to partially surround the bead.

The teachings in Dreyer do not make up for the above identified deficiencies of Ingram. Thus, for at least the above reasons, withdrawal of the rejections is respectfully requested.

Applicants also present claim 159 for consideration by the Examiner and to further distinguish over the teachings of Ingram and Dreyer. As noted above, Ingram only discloses either segment portions 43 or flange portions 42 being in contact with bead 37. In contrast, Applicants' new claim 159 recites, in combination, "the appendage element being formed as a continuous extension of the zone of interaction, the appendage element being adapted to interact and contact with the projection elements in the extended configuration." Ingram fails to teach or suggest the above the above feature in the extended configuration as set fort in claim 159.

In view of the above amendments and remarks, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140 under Order No. PTB-4017-98.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, she is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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